

1 State of Arkansas
2 91st General Assembly
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4

As Engrossed: S2/27/17

A Bill

SENATE BILL 294

5 By: Senator Irvin
6 By: Representative Petty
7

For An Act To Be Entitled

9 AN ACT CONCERNING THE SENTENCING OF A PERSON UNDER
10 EIGHTEEN YEARS OF AGE; ESTABLISHING THE FAIR
11 SENTENCING OF MINORS ACT OF 2017; TO DECLARE AN
12 EMERGENCY; AND FOR OTHER PURPOSES.
13
14

Subtitle

15 CONCERNING THE SENTENCING OF A PERSON
16 UNDER EIGHTEEN YEARS OF AGE; TO DECLARE
17 AN EMERGENCY; AND ESTABLISHING THE FAIR
18 SENTENCING OF MINORS ACT OF 2017.
19
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21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. DO NOT CODIFY. Title.

25 This act shall be known and may be cited as the "Fair Sentencing of
26 Minors Act of 2017".
27

28 SECTION 2. DO NOT CODIFY. Legislative intent.

29 (a)(1) The General Assembly acknowledges and recognizes that minors
30 are constitutionally different from adults and that these differences must be
31 taken into account when minors are sentenced for adult crimes.

32 (2) As the United States Supreme Court quoted in Miller v.
33 Alabama, 132 S.Ct. 2455 (2012), "only a relatively small proportion of
34 adolescents" who engage in illegal activity "develop entrenched patterns of
35 problem behavior," and "developments in psychology and brain science continue
36 to show fundamental differences between juvenile and adult minds," including



1 “parts of the brain involved in behavior control”.

2 (3) Minors are more vulnerable to negative influences and
3 outside pressures, including from their family and peers, and they have
4 limited control over their own environment and lack the ability to extricate
5 themselves from horrific, crime-producing settings.

6 (4) The United States Supreme Court has emphasized through its
7 cases in Miller, Roper v. Simmons, 543 U.S. 551 (2005), and Graham v.
8 Florida, 560 U.S. 48 (2010), that “the distinctive attributes of youth
9 diminish the penological justifications for imposing the harshest sentences
10 on juvenile offenders, even when they commit terrible crimes”.

11 (5) Youthfulness both lessens a juvenile’s moral culpability and
12 enhances the prospect that, as a youth matures into an adult and neurological
13 development occurs, these individuals can become contributing members of
14 society.

15 (b) In the wake of these United States Supreme Court decisions and the
16 emerging juvenile brain and behavioral development science, several states,
17 including Texas, Utah, South Dakota, Wyoming, Nevada, Iowa, Kansas, Kentucky,
18 Montana, Alaska, West Virginia, Colorado, Hawaii, Delaware, Connecticut,
19 Vermont, Massachussets, and the District of Columbia, have eliminated the
20 sentence of life without parole for minors.

21 (c) It is the intent of the General Assembly to eliminate life without
22 parole as a sentencing option for minors and to create more age-appropriate
23 sentencing standards in compliance with the United States Constitution for
24 minors who commit serious crimes.

25
26 SECTION 3. Arkansas Code § 5-4-104(b), concerning authorized
27 sentences for capital murder or treason, is amended to read as follows:

28 (b) A defendant convicted of capital murder, § 5-10-101, or treason, §
29 5-51-201, shall be sentenced to death or life imprisonment without parole in
30 accordance with §§ 5-4-601 – 5-4-605, 5-4-607, and 5-4-608, except if the
31 defendant was younger than eighteen (18) years of age at the time he or she
32 committed the capital murder or treason he or she shall be sentenced to:

33 ~~(1) Life imprisonment without parole under § 5-4-606; or~~

34 ~~(2) Life~~ life imprisonment with the possibility of parole after
35 serving a minimum of ~~twenty-eight (28)~~ thirty (30) years’ imprisonment.

36

1 SECTION 4. Arkansas Code Title 5, Chapter 4, Subchapter 1, is amended
2 to add an additional section to read as follows:

3 5-4-108. Sentencing for person who committed an offense when he or she
4 was less than 18 years of age.

5 A defendant shall not be sentenced to death or life imprisonment
6 without the possibility of parole for an offense if the defendant was less
7 than eighteen (18) years of age at the time the offense was committed.

8
9 SECTION 5. Arkansas Code § 5-4-602(3), concerning the trial procedure
10 for a capital murder charge, is amended to read as follows:

11 (3)(A) If the defendant is found guilty of capital murder, the
12 same jury shall sit again in order to:

13 (i) Hear additional evidence as provided by
14 subdivisions (4) and (5) of this section; and

15 (ii) Determine the sentence in the manner provided
16 by § 5-4-603.

17 (B) However, if the state waives the death penalty,
18 stipulates that no aggravating circumstance exists, or stipulates that
19 mitigating circumstances outweigh aggravating circumstances, then:

20 (i) ~~No~~ A hearing under subdivision (3)(A) of this
21 section is not required; and

22 (ii) The trial court shall sentence the defendant to
23 life imprisonment without parole~~+~~.

24 (C) If the defendant was less than eighteen (18) years of
25 age at the time of the offense, then a hearing under subdivision (3)(A) of
26 this section is not required;

27
28 SECTION 6. Arkansas Code § 5-10-101(c), concerning the punishment for
29 the criminal offense of capital murder, is amended to read as follows:

30 (c)(1) Capital murder is punishable as follows:

31 (A) If the defendant was eighteen (18) years of age or
32 older at the time he or she committed the capital murder:

33 (i) Death; or

34 (ii) Life imprisonment without parole under §§ 5-4-
35 601 – 5-4-605, 5-4-607, and 5-4-608; or

36 (B) *If the defendant was younger than eighteen (18) years*

1 of age at the time he or she committed the capital murder~~+~~,

2 ~~(i) Life imprisonment without parole as it is~~
3 ~~defined in § 5-4-606; or~~

4 ~~(ii) Life life imprisonment with the possibility of~~
5 ~~parole after serving a minimum of ~~twenty-eight (28)~~ thirty (30) years'~~
6 ~~imprisonment.~~

7 (2) For any purpose other than disposition under §§ 5-4-101 – 5-
8 4-104, 5-4-201 – 5-4-204, 5-4-301 – 5-4-307, 5-4-401 – 5-4-404, 5-4-501 – 5-
9 4-504, 5-4-601 – 5-4-605, 5-4-607, 5-4-608, 16-93-307, 16-93-313, and 16-93-
10 314, capital murder is a Class Y felony.

11
12 SECTION 7. Arkansas Code § 5-10-102(c), concerning the sentence for
13 murder in the first degree, is amended to read as follows:

14 (c)(1) Murder in the first degree is a Class Y felony.

15 (2) Unless the application of § 16-93-621 results in a person
16 being eligible for parole at an earlier date, if a person was younger than
17 eighteen (18) years of age at the time he or she committed murder in the
18 first degree and is sentenced to life imprisonment, the person is eligible
19 for parole after serving a minimum of ~~twenty-five (25)~~ years' imprisonment.

20
21 SECTION 8. Arkansas Code Title 16, Chapter 80, is amended to add an
22 additional section to read as follows:

23 16-80-104. Comprehensive mental health evaluation for a minor
24 convicted of capital murder or murder in the first degree.

25 (a) If a comprehensive mental health evaluation is not performed at
26 the request of the minor convicted of capital murder, § 5-10-101, or murder
27 in the first degree, § 5-10-102, before his or her trial or before he or she
28 is sentenced, the circuit court shall ensure that a comprehensive mental
29 health evaluation is conducted on the minor by an adolescent mental health
30 professional licensed in the state before the minor's entry into the
31 Department of Correction for a sentence of life imprisonment.

32 (b) A comprehensive mental health evaluation ordered under this
33 section shall include without limitation the following information concerning
34 the minor:

35 (1) Family interviews;

36 (2) Prenatal history;

1 (3) Developmental history;

2 (4) Medical history;

3 (5) History of treatment for substance use;

4 (6) Social history; and

5 (7) A psychological evaluation.

6 (c) A comprehensive mental health evaluation conducted under this
7 section:

8 (1) Is not admissible into evidence at a trial or sentencing
9 over the objections of the minor; and

10 (2) Shall be included in any documentation or inmate file kept
11 by the Department of Correction or, if the minor is eventually supervised on
12 parole, the Department of Community Correction.

13
14 SECTION 9. Arkansas Code § 16-93-612(e), concerning parole eligibility
15 procedures for offenses that occurred after January 1, 1994, is amended to
16 read as follows:

17 (e) For an offender serving a sentence for a felony committed on or
18 after January 1, 1994, § 16-93-614 governs that person's parole eligibility,
19 unless otherwise noted and except:

20 (1) If the felony is murder in the first degree, § 5-10-102,
21 kidnapping, if a Class Y felony, § 5-11-102(b)(1), aggravated robbery, § 5-
22 12-103, rape, § 5-14-103, or causing a catastrophe, § 5-38-202(a), and the
23 offense occurred after July 28, 1995, § 16-93-618 governs that person's
24 parole eligibility;

25 (2) If the felony is manufacturing methamphetamine, § 5-64-
26 423(a) or the former § 5-64-401, or possession of drug paraphernalia with the
27 intent to manufacture methamphetamine, the former § 5-64-403(c)(5), and the
28 offense occurred after April 9, 1999, § 16-93-618 governs that person's
29 parole eligibility; ~~or~~

30 (3) If the felony is battery in the second degree, § 5-13-202,
31 aggravated assault, § 5-13-204, terroristic threatening, § 5-13-301, domestic
32 battering in the second degree, § 5-26-304, or residential burglary, § 5-39-
33 201, and the offense occurred on or after April 1, 2015, § 16-93-620 governs
34 that person's parole eligibility; or

35 (4) If the felony was committed by a person who was a minor at
36 the time of the offense, he or she was committed to the Department of

1 Correction, and the offense occurred before, on, or after the effective date
2 of this act, § 16-93-621 governs that person's parole eligibility.

3
4 SECTION 10. Arkansas Code § 16-93-613, concerning parole eligibility
5 for Class Y, Class A, and Class B felonies, is amended to add an additional
6 subsection to read as follows:

7 (c) Except as provided for under § 16-93-619, for an offense committed
8 before, on, or after the effective date of this act, a person who was a minor
9 at the time of committing an offense listed under subsection (a) of this
10 section is eligible for release on parole under this section.

11
12 SECTION 11. Arkansas Code § 16-93-614, concerning parole eligibility
13 for offenses committed after January 1, 1994, is amended to add an additional
14 subsection to read as follows:

15 (d) Except as provided for under § 16-93-619, for an offense committed
16 before, on, or after the effective date of this act, a person who was a minor
17 at the time of committing an offense listed under subsection (c) of this
18 section is eligible for release on parole under this section.

19
20 SECTION 12. Arkansas Code § 16-93-618, concerning parole eligibility
21 for certain Class Y felony offenses and certain methamphetamine offenses and
22 the serving of seventy percent (70%) of a person's sentence, is amended to
23 add an additional subsection to read as follows:

24 (f) Except as provided for under § 16-93-619, for an offense committed
25 before, on, or after the effective date of this act, a person who was a minor
26 at the time of committing an offense listed under subsection (a) of this
27 section is eligible for release on parole under this section.

28
29 SECTION 13. Arkansas Code Title 16, Chapter 93, Subchapter 6, is
30 amended to add an additional section to read as follows:

31 16-93-621. Parole eligibility – A person who was a minor at the time
32 of committing an offense that was committed before, on, or after the
33 effective date of this act.

34 (a)(1) A minor who was convicted and sentenced to the department for
35 an offense committed before he or she was eighteen (18) years of age and in
36 which the death of another person did not occur is eligible for release on

1 parole no later than after twenty (20) years of incarceration, including any
2 applicable sentencing enhancements, and including an instance in which
3 multiple sentences are to be served consecutively or concurrently, unless by
4 law the minor is eligible for earlier parole eligibility.

5 (2)(A) A minor who was convicted and sentenced to the department
6 for an offense committed before he or she was eighteen (18) years of age, in
7 which the death of another person occurred, and that was committed before,
8 on, or after the effective date of this act is eligible for release on parole
9 no later than after twenty-five (25) years of incarceration if he or she was
10 convicted of murder in the first degree, § 5-10-102, or no later than after
11 thirty (30) years of incarceration if he or she was convicted of capital
12 murder, § 5-10-101, including any applicable sentencing enhancements, unless
13 by law the minor is eligible for earlier parole eligibility.

14 (B) Subsection (a)(2)(A) of this section applies
15 retroactively to a minor whose offense was committed before he or she was
16 eighteen (18) years of age, including minors serving sentences of life,
17 regardless of the original sentences that were imposed.

18 (3) Credit for meritorious good time shall not be applied to
19 calculations of time served under subsection (a) of this section for minors
20 convicted and sentenced for capital murder, § 5-10-101(c), or when a life
21 sentence is imposed for murder in the first degree, § 5-10-102.

22 (4) The calculation of the time periods under this subsection
23 shall include any applicable sentence enhancements to which the minor was
24 sentenced that accompany the sentence for the underlying offense.

25 (b)(1) The Parole Board shall ensure that a hearing to consider the
26 parole eligibility of a person who was a minor at the time of the offense
27 that was committed before, on, or after the effective date of this act takes
28 into account how a minor offender is different from an adult offender and
29 provides a person who was a minor at the time of the offense that was
30 committed before, on, or after the effective date of this act with a
31 meaningful opportunity to be released on parole based on demonstrated
32 maturity and rehabilitation.

33 (2) During a parole eligibility hearing involving a person who
34 was a minor at the time of the offense that was committed before, on, or
35 after the effective date of this act, the board shall take into consideration
36 in addition to other factors required by law to be considered by the board:

1 (A) The diminished culpability of minors as compared to
2 that of adults;

3 (B) The hallmark features of youth;

4 (C) Subsequent growth and increased maturity of the person
5 during incarceration;

6 (D) Age of the person at the time of the offense;

7 (E) Immaturity of the person at the time of the offense;

8 (F) The extent of the person's role in the offense and
9 whether and to what extent an adult was involved in the offense;

10 (G) The person's family and community circumstances at the
11 time of the offense, including any history of abuse, trauma, and involvement
12 in the child welfare system;

13 (H) The person's participation in available rehabilitative
14 and educational programs while in prison, if those programs have been made
15 available, or use of self-study for self-improvement;

16 (I) The results of comprehensive mental health evaluations
17 conducted by an adolescent mental health professional licensed in the state
18 at the time of sentencing and at the time the person becomes eligible for
19 parole under this section; and

20 (J) Other factors the board deems relevant.

21 (3) A person eligible for parole under this section may have an
22 attorney present to represent him or her at the parole eligibility hearing.

23 (c)(1)(A) The Parole Board shall notify a victim of the crime before
24 the board reviews parole eligibility under this section for an inmate
25 convicted of the crime and provide information regarding victim input
26 meetings, as well as state and national victim resource information.

27 (B) If the victim is incapacitated or deceased, the notice
28 under subdivision (c)(1)(A) of this section shall be given to the victim's
29 family.

30 (C) If the victim is less than eighteen (18) years of age,
31 the notice under subdivision (c)(1)(A) of this section shall be given to the
32 victim's parent or guardian.

33 (2) Victim notification under this subsection shall include:

34 (A) The location, date, and time of parole review; and

35 (B) The name and phone number of the individual to contact
36 for additional information.

